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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

056151.49519US

First Named Inventor: Gunter STEMPLEArt Unit: 3761Application Number: 09/743,480Examiner: Darwin P. ErezFiled: Janaury 10, 2001

Title:

Device for Determining the Content of Carbon Dioxide in Exhaled Air

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact  
Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.**

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

**1. Petition fee**

☒ Small entity – fee \$ 270.00 (37 CFR 1.17(l)). Applicant claims small entity status.  
See 37 CFR 1.27.

☐ Other than small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(l)).

**2. Reply and/or fee**

A The reply and/or fee to the above-noted Office action in the form of  
an Appeal Brief \_\_\_\_\_ (identify the type of reply):

☒ has been filed previously on February 7, 2008

☐ is enclosed herewith.

B The issue fee of \$ \_\_\_\_\_

☐ has been filed previously on \_\_\_\_\_

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

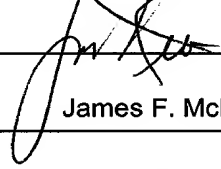
## 3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

  
\_\_\_\_\_  
Signature  
James F. McKeown  
\_\_\_\_\_  
Typed or printed name  
Intellectual Property Group, P.O. Box 14300  
\_\_\_\_\_  
Address  
Washington, DC 20044-4300  
\_\_\_\_\_  
Address

February 12, 2009

\_\_\_\_\_  
Date

25,406

\_\_\_\_\_  
Registration Number, if applicable  
(202) 624-2500

\_\_\_\_\_  
Telephone Number

- Enclosure ☒ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unavoidable delay
- ☒ Revised Appeal Brief

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

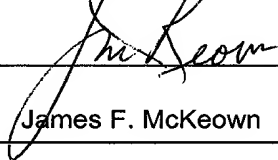
I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature\_\_\_\_\_  
Typed or printed name of person signing certificate

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

	February 12, 2009
Signature	Date
James F. McKeown	25,406
Typed or printed name	Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

On February 7, 2008, an Appeal Brief was filed in this application. Only upon a review of PAIR on February 6, 2009 was it noted that a Notice - Defective Appeal Brief was entered; however, the Notice - Defective Appeal Brief does not have a mail date and has not been forwarded to the attorney of record, and was only realized by doing an internal status check. A copy of the Notice - Defective Appeal Brief and a copy of the PAIR printout is attached hereto. It is unclear whether this application has been abandoned in light of the undated Notice and the time period set by the Notice, said Notice having not been received by the office of the above-undersigned which maintains a full Mail Room and Docketing Department.

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 05-1323, Docket No.: 056151.49519US.

(Please attach additional sheets if additional space is needed.)

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/743,480	<b>Applicant(s)</b> STEMPLE, GUNTER	
	<b>Examiner</b> Darwin Erez	<b>Art Unit</b> 3761	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 07 February 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

Grounds of Rejection to be Reviewed on Appeal: The brief should include the claims, statutes and references according to the rejections per the Examiners office action..

  
 LASHAWN HINTON  
 PATENT APPEAL CENTER SPECIALIST

**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.**

### Bibliographic Data

Mail Room Date	Document Code	Document Description	Document Category	Page Count
02-22-2008	APBD	Notice - Defective Appeal Brief	PROSECUTION	1
02-07-2008	AP.B	Appeal Brief Filed	PROSECUTION	13
02-07-2008	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	2
02-07-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
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02-07-2008	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
12-07-2007	N/AP	Notice of Appeal Filed	PROSECUTION	1
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09-10-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
06-13-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
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11-16-2006	RCEX	Request for Continued Examination (RCE)	PROSECUTION	3
11-16-2006	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
11-16-2006	CLM	Claims	PROSECUTION	3
11-16-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
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04-24-2006	AP.PRE.DEC	Pre-Brief Appeal Conference decision	PROSECUTION	2
02-28-2006	AP.PRE.REQ	Pre-Brief Conference request	PROSECUTION	3
02-28-2006	N/AP	Notice of Appeal Filed	PROSECUTION	2
11-28-2005	CTFR	Final Rejection	PROSECUTION	6
11-28-2005	892	List of references cited by examiner	PRIOR ART	1
08-16-2005	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
08-16-2005	CLM	Claims	PROSECUTION	3
08-16-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	5
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08-16-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
07-14-2005	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	2
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03-31-2005	FRPR	Certified Copy of Foreign Priority Application	PROSECUTION	37
01-14-2005	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
01-14-2005	CLM	Claims	PROSECUTION	2
01-14-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	3
01-14-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
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10-15-2004	892	List of references cited by examiner	PRIOR ART	1
10-15-2004	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
08-06-2004	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
06-23-2004	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
06-23-2004	CLM	Claims	PROSECUTION	2
06-23-2004	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
06-23-2004	RCEX	Request for Continued Examination (RCE)	PROSECUTION	1
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06-02-2004	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	2
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02-10-2004	SRNT	Examiner's search strategy and results	PROSECUTION	8
11-26-2003	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
11-26-2003	CLM	Claims	PROSECUTION	2
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08-27-2003	CTNF	Non-Final Rejection	PROSECUTION	6
08-27-2003	892	List of references cited by examiner	PRIOR ART	1
08-27-2003	1449	List of References cited by applicant and considered by examiner	PRIOR ART	1
08-21-2003	SRNT	Examiner's search strategy and results	PROSECUTION	9
08-21-2003	SRNT	Examiner's search strategy and results	PROSECUTION	6
08-15-2003	ELC.	Response to Election / Restriction Filed	PROSECUTION	2
07-15-2003	CTRS	Requirement for Restriction/Election	PROSECUTION	4
11-15-2001	M903	Notice of DO/EO Acceptance Mailed	PROSECUTION	2
10-17-2001	LET.	Miscellaneous Incoming Letter	AS FILED	45
10-17-2001	A.PE	Preliminary Amendment	PROSECUTION	1
10-17-2001	CLM	Claims	PROSECUTION	2
10-17-2001	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
10-17-2001	PEFN	Pre-Exam Formalities Notice	PROSECUTION	1
10-17-2001	OATH	Oath or Declaration filed	PROSECUTION	2
08-17-2001	M905	Notice of DO/EO Missing Requirements Mailed	PROSECUTION	2
08-03-2001	PETDEC	Petition Decision	PROSECUTION	2
05-22-2001	PET.	Petition Entered	PROSECUTION	2
05-09-2001	CTMS	Miscellaneous Action with SSP	PROSECUTION	2
01-10-2001	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
01-10-2001	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
01-10-2001	FWCLM	Index of Claims	PROSECUTION	1
01-10-2001	TRNA	Transmittal of New Application	PROSECUTION	2
01-10-2001	136A	Authorization for Extension of Time all replies	PROSECUTION	2
01-10-2001	DRW	Drawings-only black and white line drawings	PROSECUTION	2
01-10-2001	SPEC	Specification	PROSECUTION	12
01-10-2001	CLM	Claims	PROSECUTION	5
01-10-2001	ABST	Abstract	PROSECUTION	1
01-10-2001	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
01-10-2001	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
01-10-2001	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1
01-10-2001	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	2
01-10-2001	371P	Documents submitted with 371 Applications	PROSECUTION	19
01-10-2001	SPEC	Specification	PROSECUTION	11
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